

Harsh Vardhan Lodha and Others Vs Devendra Kumar Mantri and Another
 Priyamvada Devi Birla, Decd. And Harsh Vardhan Lodha and Others Vs Ajay Kumar Newar and Others

Court: Calcutta High Court

Date of Decision: Aug. 23, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 22 Rule 10, Order 40 Rule 1

Companies Act, 1956 â€" Section 105C, 108, 111, 168, 169

Constitution of India, 1950 â€" Article 19(5), 47

Income Tax Act, 1961 â€" Section 168

Succession Act, 1925 â€" Section 10, 104, 108, 108(1), 108(1)

Hon'ble Judges: J.N. Patel, C.J; Soumitra Pal, J

Bench: Division Bench

Advocate: Pratap Chatterjee, Mr. S. Roychowdhury, Mr. D. Mondal and Mr. S.K. Trivedi, for the Appellant; Samaraditya Pal for the Respondents No. 1(a), 1(b) and 1(c), Mr. S.P. Sarkar , Mr. D.N. Sharma, Advocate, Ms. Vineeta Meheria, Advocate, Ms. S. Ghose, Advocate, Mr. Hiral Mitra , Mr. Bimal Chatterjee , Mr. Swarnendu Ghosh, Advocate, Mr. Debduddha Sen, Advocate, Mr. M.K. Seal, Advocate for the Respondents No. 1 and 2 and Mr. K.N. Mukherjee, Advocate for one of the Executors, for the Respondent

Judgement

J.N. Patel, C.J.

These are appeals arising out of the common judgment and order delivered on 27th August, 2010 on two applications GA

3714 of 2008 and GA 3718 of 2008 filed in connection with PLA No. 242 of 2004 whereby those were disposed of by putting the estate for the

time being in the custody of three independent persons who would act as Joint Administrators pendente lite in and over all the estates left by the

deceased. The relevant portion of the said judgment is noted below:-

....They will make inventory of the estate and take possession of the same except the properties which are under possession of the Joint Special

Officer for the time being. They shall submit report of inventory within four weeks from the date of assumption of charges. They will take custody

of all original share scripts of all the companies and other valuable documents viz. Boards, fixed deposits" receipts etc. which belonged to and held

by the said deceased, shall operate the bank account or accounts and collect dividends, and meet outgoings both statutory and non-statutory

which are due and payable by the estate of the said deceased. In one words they will take all lawful steps for general Administration of the estate

left by the said deceased. In the process they will take steps in accordance with law for their participating in all the meetings of Shareholders of the

companies and also take all lawful steps as shareholders in accordance with law. However while exercising voting rights for the purpose of

appointment of any Director or Constitution or reconstitution of Board of Directors they shall give prior intimation to this Court in the form of

report indicating the reason and need for appointment of new Director and constitution or reconstitution of Board of Directors of the Companies in

which the deceased had shareholdings wherever possible under law...

In this context it is appropriate to mention that before the learned Single Judge parties had prayed for appointment of Administrator Pendente Lite

("APL for short") as evident from their respective applications. In application being GA 3731 of 2008, the relevant prayers are as follows:

a) The petitioner No. 1, Harsh Vardhan Lodha, be specifically authorized/empowered to carry out and discharge the following acts and functions

relating to the Estate of Late Priyamvada Devi Birla as administrator pendente lite thereof:

i) Operation of bank accounts pertaining to Estate of Late Priyamvada Devi Birla including the Bank Account No. 0100002100579690 opened

by Late Rajendra Singh Lodha with Punjab National Bank Brabourne Road Branch, Kolkata.

ii) Collection of dividends and all other incomes of the Estate of Late Priyamvada Devi Birla and deposit of the same in the said Bank Account No.

0100002100579690...

2. In the application being GA 3714 of 2008, the relevant prayers are extracted hereunder:-

a) The petitioners herein being the executors of the Will of P Birla dated 13th July 1982 be authorized to take possession and custody of the estate

and to act as such executors in accordance with law.

b) An Administrator pendente lite and/or a Receiver be appointed to take over possession of all moveable and immoveable assets and properties

of the deceased including the shareholding of those companies as specified in the Schedule annexed hereto and marked "D" by substituting the

name in stead and place of the deceased and/or RS Lodha wherever his name had been substituted in place of the deceased.

c) Such Administrator pendente lite and/or Receiver be directed to take all decisions and exercise all his rights in regard to shareholdings of P Birla

in the companies referred to in Annexure "C"

3. Priyamvada Devi Birla (for short "PBD") died on 3rd July, 2004. Incidentally, Madhav Prasad Birla ("MPB" for short) her husband had expired

on 30th July, 1990. PDB had executed her Will dated 18th April, 1999 (the 1999 Will) and got it registered. In the said Will Rajendra Singh

Lodha (for short "RSL") was appointed as the sole executor. RSL was the legatee of the Will with the direction that:

4. I, by this will and testament, nominate Sri Rajendra S. Lodha, a devoted friend of the family and a chartered accountant of repute, to take over

the management-administrative, financial, legal - and every other aspect relevant to complete the ownership, control and full management of all the

business and properties possessed or owned by me, either directly or indirectly, and the entire right, title and interest of all of which I hereby

bequeath to him ...

4. PDB also executed a codicil/document dated 15th April, 2003. After the death of PDB, application for probate was filed by RSL. Caveats

were filed. Some of the caveats filed were discharged by the High Court and the judgment was upheld by the Supreme Court in Krishna Kumar

Birla Vs. Rajendra Singh Lodha and Others, . Caveats of GPB and two sisters of MPB were retained. The probate matter was marked as

Testamentary Suit No. 6 of 2004. After the conclusion of hearing of the application for discharge of caveats and when judgment was awaited, the

Birlas and Newar filed before the High Court three separate applications for appointment of APL on the ground that RSL was not managing the

estate properly including the companies stated to be part of the M.P Birla group of companies. The said applications for appointment of APL were

disposed of by the learned Single Judge by the judgment and order dated 19th May, 2006, the relevant portions of which are extracted

hereunder:-

73. Under such circumstances I feel that those facts and bundle of facts and law as discussed above, supported by the documents. Constitute the

absolute necessity appointment of the Administrator, pendente lite, at least for a brief period.

74. Allegations and contentions as regard his alleged misconduct as a Chartered Account are not germane for the time being in this matter. So I

cannot make any comment nor I wish to do so. According to me, the aforesaid facts and circumstances are sufficient for such appointment.

75. Hence I appoint Joint Administrator, pendente lite, consisting of following persons (i) Mr. Hiranmoy Dutta, Bar-at-law of Bar Library Club; (ii)

Promotha Nath Chatterjee, Learned Advocate of Bar Association, Room No. 1; (iii) Mr. Prabir Kumar Roy, ex-Sheriff of this Court of 10 S. N.

Roy Road, Behala, Kolkata 700 019; (iv) Mr. Sujit Bhattacharjee of 52-C, Ballygunge Circular Road, Kolkata-700 019, who shall take charge

and control of all the shareholding of the deceased lady in all the companies and they should function as could be functioned under law by virtue of

the controlling shareholding of all the Companies left behind by the said lady. They shall take step for rectification of all the share registers of the

Companies recording their names. They shall immediately make an enquiry as to the dealings of Lodha vis-à-vis dividends and investment of the

dividends and submit a report to the Court they shall place themselves in the Board of Directors wherever it is possible by virtue of the

shareholding. They shall, in consultation with each other, decide to dissolve the Board if necessary under law for the benefit of the Companies,

wherever possible.

76. Of course they must consult and take the views of Lodha in each and every step while taking decision. If his views and advice are accepted by

the Administrators then the views of the contesting defendants shall be taken and if there is a difference in the two views the matter should be

placed before the Court for obtaining direction. They shall remain in the office of the Administrator, pendente lite, for a period of two years or till

the disposal of the probate proceedings whichever is earlier. Therefore, Lodha shall hand over all the charges to the aforesaid appointed

Administrators, pendente lite. Interim order passed earlier will continue till possession is taken by the Administrator.

5. Aggrieved appeals being APO No 153 of 2006 and APO No 197 of 2006 were preferred. By judgment and order dated 11th October, 2007

the Division Bench set aside the judgment and order of the learned Single Judge, the relevant portion of which is reproduced hereunder:-

307. Therefore, on that question also, after considering the facts and circumstances of the case and the materials on record placed before us. We

have to come to the conclusion, with utmost respect to His Lordship, that His Lordship has mis-appreciated the fact and held that the Estate is "in

medio". Such conclusion of His Lordship, in our opinion, cannot be sustainable in the eye of law in the facts and circumstances of this case.

308. The further question that whether the Court has jurisdiction to apply discretion in the facts and circumstances of this case, it is needless to

mention here that the Court will apply its discretion providing that the case is being made out by the parties calling for such discretion in a case

where the case of necessity for appointment of Administrator Pendente Lite has been made out.

309. Hence, we are unable to find out such situation in this matter and unable to uphold the decision of His Lordship and according to us, the

Court has not appreciated the facts of the case properly and has not exercised its discretion properly in appointing the Administrator Pendente

Lite.

310. Hence, we pass an order of injunction restraining the appellant not to deal with and not to transfer any of the assets and properties of the

Estate of PDB, in any manner whatsoever, and further, in our opinion, the order so passed by the Hon'ble First Court at the ad-interim stage is

enough to preserve the Estate of PDB. We direct the Executor, RSL to give a details of the dividends so collected in respect of the shares of PDB

and the accounts, therefor, to be furnished to the parties. We also direct RSL to maintain an account in respect of the dividend so received on the

shares of PDB and to retain the same in a separate account and no amount to be spent out of the said fund by RSL excepting for preservation of

the Estate.

311. In the cross-appeals, we do not find that a case has been made out by Mr. S. B. Mokherjee's client nor we have been able to find out that

there is any mismanagement on the part of the appellant.

6. Being aggrieved the Birlas, Newar and Mohta filed Special Leave Petitions before the Apex Court. On 16th April, 2008, in course of hearing,

the Birlas, Newar and Mohta did not press the petitions and the SLPs were dismissed by passing the following order:

Permission to file SLP is granted.

In view of the Judgment pronounced by this Court on 31st March, 2008, in Krishna Kumar Birla vs. Rajendra Singh Lodha and Ors., in Civil

appeal No. 2277/2008 & other connected appeals, Mr. Ram Jethmalani and other learned senior counsel appearing on behalf of the petitioners do

not press these petitions. The special leave petitions are dismissed as not pressed.

7. Subsequently, RSL expired on 3rd October, 2008 and was succeeded, inter alia by his son, Harsh Vardhan Lodha ("HVL" for short).

Thereafter, as quoted at the outset, the second set of applications for appointment of APLs (G.A Nos 3714 and 3718 of 2008) were filed by

Birlas, the defendants in the testamentary suit. HVL too filed an application (G.A No 3731 of 2008) for appointment of APL. Such applications

were heard and disposed of by common judgment and order declared on 27th August, 2010 (which has already been taken note of at the very

outset of this judgment).

8. While appeals were being heard, by an order dated 19th January, 2012 a committee of APL was appointed as Joint Administrators substituting

the Committee of APL appointed as Joint Administrators by the learned Single Judge.

9. Now the only point to be decided is the powers of the Committee of APL Vis-a-vis the exercise of nature of rights relating to the shares which

form major part of the estate.

10. In so far as the appellants are concerned it is contended that when subsisting interim orders passed in the instant proceeding have shown to be

adequate to preserve the Estate and safeguard the status quo as prevailing on the date of death of PDB, is there any necessity for conferring

powers on the APL to get the shares recorded in their names and to take over the responsibility of running the MPB Group of Companies.

11. Even if the subsisting orders are held to be not adequate, which have not been held by the Trial Court, does the Probate Court have

jurisdiction and power to authorize APLs to apply and get the shares comprised in the Estate transferred in their names so that they would have

voting right and take over management and control of MPB Group of companies.

12. It is submitted that the interim orders passed by the Court is to maintain status quo as prevailing on the date of filing of the legal proceeding and

not to create new state of affairs, which will disturb the status quo as prevailing during the last seven years.

13. There is no necessity for conferring powers on the APL to get the shares of the deceased recorded in their names and to take over the

responsibility of running the M.P. Birla Group of Companies. Further, the Court could not have directed the Joint APLs to be entitled to get the

shares transferred in their names in the register of shares of the various companies primarily on the ground that such transmission of shares is illegal

and cannot be done and it will be contrary to the provisions of the Companies Act, 1956 and particularly when the company's stock whose shares

are held by the deceased are not parties before the Court and the said order cannot be passed contrary to the provision of Sections 108 of the

Companies Act as the said power is vested in the Company.

14. Further it is submitted that the Joint APLs are not personal representatives of the testatrix and therefore, they cannot be substituted in her

place. It is submitted that the order came to be passed by the learned Single Judge by misinterpreting Article 47 of the Articles of Association and

the provisions of law. It is submitted that the application can be made to the Companies for recording of shares only by an applicant, who has

obtained Succession Certificate u/s 373 of the Indian Succession Act or has obtained grant of Letters of Administration on the seal of Court with

copy of the Will annexed (Section 290) or who is an Executor under the Will to whom Probate has been granted. Only those three categories of

persons can claim to be legal representative or personal representative of the testatrix in whose name the shares stand recorded in the register of

members of the companies. There is no question of grant of Probate or Letter of Administration with a copy of the Will annexed or issuance of a

Succession Certificate in favour of any party at this interlocutory stage without deciding the question of validity of the Will of the deceased. The

shares should not be registered in the name of the 3 APLs without any Succession Certificate or Letters of Administration with copy of the Will

annexed or Probate, in circumvention of provisions of the Indian Succession Act, 1925.

15. Learned counsel appearing for the appellants has submitted that the APLs are merely Receivers and, therefore, they will not be competent to

act as legal representatives or personal representatives of the deceased and step into her shoes so as to get the shares registered in their names.

16. It is contention of the Learned Counsel for the respondents that the Joint APLs will be entitled to exercise all rights arising out of holding of

shares as was valuable to the deceased.

17. It is the appellants' case that he (Harsh Vardhan Lodha) may be appointed as APL so as to operate bank account and for collection of

dividend and all other incomes of the estate of late PDB and deposit of the same in the said account and submission of Income Tax and Wealth

Tax returns pertaining to estate of late PDB so also and submission of account to the estate of late PDB in terms of the order of the Hon'ble

Division Bench dated 11th October, 2007 of this Court.

18. Whereas on behalf of the respondents it is sought that an APL and/or receiver be appointed to take over possession of all movable and

immovable assets and properties of PDB including the share holdings of those companies as specified in the Schedule Annexure Marked "B" by

substituting in stead and in place of RSL wherefrom his name appears and/or directed to take all decisions and because all rights in the company

referred to in Annexure "A".

19. It is the contention of the Learned Counsel appearing for the appellants that such an administrator by virtue of his being appointed by the Court

u/s 247 of the ISA cannot be considered as the legal representative of the deceased person for all purposes and the estate do not vest in him, as in

the case of General Administrator who is appointed by the Court only after the dispute is finally decided. An APL is an interim administrator in

whom the estate of the deceased does not vest and, therefore, his powers are limited to the management of the estate and cannot be compared

with the administrator to whom letters of administrations are granted upon final adjudication by the Court. Therefore, he cannot intermeddle with

the property as such grant is not contemplated u/s 247 of the ISAs which prohibits distribution of estate or transfer of title during the interlocutory

period.

20. It is, therefore, contended that the impugned order authorizing the APL for getting the shares transferred in their names is illegal and cannot be

done.

21. It is submitted that the respondents have been insisting upon conferring the power or the right in APL to get the shares recorded in their names

so that APLs have the voting rights in respect of the M.P. Birla group of Companies and they or their nominees will be in the Board of Directors

and the responsibility of running the M.P. Birla Group of Companies will be thrust upon them. According to them, the main question is whether

APL, who is an officer of Court can at all be empowered to apply to the Companies and get the major portion of the assets of the Estate (shares)

transferred to them by an interlocutory order during the pendency of the Testamentary Suit?

22. It is submitted that the interim order passed by the Court preserving the status quo in respect of estate of PDB which is existing for last seven

years if continued will serve the purpose. Therefore, no direction should have been issued in terms of the impugned order.

23. It is submitted that right to vote in respect of shares is a of a company is a statutory right and is to be exercised in terms of the statute. Section

87 of the Companies Act- confers right to vote only upon members i.e. holder of shares whose name appears in the register of members can only

have voting right. According to the appellants, the deceased member cannot vote because he/she is no longer alive. The name of the deceased

member will continue in the register of members, until the name of the deceased member is substituted in the register of members of the company in

accordance with law i.e. provisions of the Companies Act, 1956.

24. It is therefore submitted that this is possible only in case of :

a) a person who has obtained transfer of shares in accordance with the provisions of Companies Act, 1956 from a member whose name appears

on the register of members and;

b) a person in whose favour there has been transmission of shares by operation of law :

Section 108(1) of the Companies Act.

and as the deceased share holder cannot obviously execute the deed of transfer and therefore, in the absence of such transfer in favour of APL

they have no right to get their names recorded in the register of members.

The other category is in case of a person and can happen only when there has been transmission by operation of law and, therefore, the APL are

not personal representative of the testatrix as shares and other properties of a dead person are transmitted by operation of law only to his/her

personal representative and personal representative of a deceased person is the person on whom the property of the deceased is devolved by

operation of law, who can apply to a company for registration of his name in the place of the deceased member by producing letters of

administration u/s 290 or Succession Certificate u/s 370 of the ISA or in case a deceased member leaves a Will, his estate vests in the legatee

under the Will u/s 104 of the ISA who has to produce either probate of the Will or Letters of Administration with a copy of the Will annexed as

required u/s 213 of the ISA and the third situation may arise when validity of the Will is in contest in a probate proceeding. It may be made in

favour of the executor to the Will, in whom legal estate of the deceased testator has been vested as such, even before grant of probate of the Will

by reason of Section 211 of the ISA. Therefore, an executor upon production of the Will, in the light of Section 211 can apply to the company and

such attempt on the part of the executor of the Will i.e. RSL was disputed by the respondents before the Company Law Board and it was

contended by them that until the grant of probate was finally obtained under Article 47 of the Articles of Association recognize which do not

execute under the Will which resulted in the removal of name of the Executor from the register of Members of the Company.

25. Another important contention of the appellants is that in view of the fact that the companies are not parties to the testamentary suit no order can

be passed regarding substitution of name of the members as recorded in the register of members of the company in favour of the person appointed

by the Court in a suit where company is not a party.

26. It is submitted that the shares are recorded in the name of the testator in the register of members of various companies who were not parties to

the proceedings. Therefore, considering all the circumstances Probate Court cannot direct recording of shares in favour of APL.

27. It is submitted that application can be made to the companies for recording of shares only by an applicant, who has obtained Succession

Certificate u/s 373 of the ISA or has obtained grant of Letters of Administration on the seal of Court with copy of the Will annexed (Section 290)

or who is an Executor under the Will to whom Probate has been granted (Section 222). Only those three categories of persons can claim to be

legal representative or personal representative of the testatrix in whose name the shares stand recorded in the register of members of the

companies. There is no question of grant of Probate or Letter of Administration with a copy of the Will annexed or issuance of a Succession

Certificate in favour of any party at this interlocutory stage without deciding the question of validity of the Will of the deceased. The shares should

not be registered in the name of the Joint APLs without any Succession Certificate or Letters of Administration with copy of the Will annexed or

Probate, in circumvention of provisions of the of the ISA and, therefore, the order impugned directing the Joint Administrators to get their names

recorded in the register of members of the Companies is not sustainable. Particularly, when the shares have not been transferred to them in

accordance with provision of Section 108 of the Companies Act nor the shares have been transmitted to them by operation of law.

28. It is submitted that there is a clear distinction in so far as the English law and the Indian Law on the subject. Under the English Law viz. Section

163 of the Supreme Court of Judicature Act as well as Administration of Estates Act, 1925 specifically mentions the word "grant" to an APL

whereas Section 247 of the ISA expressly use the word "appoint" and in the absence there being no grant of any nature limited or otherwise in

favour of APL. APL cannot be directed or allowed to get the shares recorded in their names which would mean transfer of legal title to the shares

of the testatrix to officers of Court.

29. It is submitted that by this method the respondents is seeking diversion/distribution of the major chunk of the estates of the testatrix. The estate

of the testatrix will loose substantial value upon shares being transferred to APL and would amount to distribution of the assets which can only take

place in favour of somebody after final grant u/s 333 of the ISA.

30. It is submitted that the learned Single Judge has misinterpreted Article 47 of the Articles of Association of East India Investment (P) Ltd. and

held that the Article provides for automatic rectification/transmission to officer of Court. This Article does not anywhere contemplate an automatic

rectification in favour of Court Officer. Moreover, companies are not parties to this proceeding and the Court has not even examined Articles of

other companies while passing such order.

31. It is submitted that the Joint Administrators are officers appointed by the Court and, therefore, the estate does not vest in him as an APL is

appointed u/s 247 of the ISA while the Court grants Letters of Administration u/s 290. Therefore, General Administrator u/s 247 cannot have the

rights and powers to acquire ownership over property over which he is appointed. He is only to generally manage the property of the deceased for

the purpose of preservation and protection of the estate.

32. It is submitted that learned Single Judge having accepted the position of APL that he cannot be equated with executor or administrator to

whom probate or Letters of Administration has been granted finally and the Trial Court after so holding have inconsistently coined a new and

unknown concept that APL would be akin to administrator appointed by Court u/s 211. Status of an Administrator Pendente lite, who has been

appointed by the Court for temporary period pending final determination of Testamentary suit is clearly different and they cannot be equated with

an Administrator to whom Letters of Administration has been granted by the Court upon final adjudication of Testamentary Suit.

33. Learned counsel for the appellant has placed several decisions in support of their submission which are enumerated below:-

a) Balkrishan Gupta and Others Vs. Swadeshi Polytex Ltd. and Another,

On appointment of a Receiver and his powers wherein it was held -

A Receiver appointed by a Court or authority in respect of a property holds it for the benefit of the true owner subject to the orders that may be

made by such Court or authority.

A Receiver appointed by a Court in respect of certain shares which had not been duly entered in the Register of Members of the company

concerned as belonging to him could not acquire certain newly issued shares which could be obtained by the members of the company. Mathalone

Vs. Bombay Life Assurance Co. Ltd.,

Although a Receiver is not the assignee or beneficial owner of the property entrusted to his care, it is an incomplete and inaccurate statement of his

relation to the property to say that he is merely its custodian. This whatever may be the other powers of a Receiver dealing with the property which

is in custodia legis while in his custody, he is not to be construed as either an assignee or beneficial owner of such property. [Jagan Tarini Dasi vs.

Naba Gopal Chabi (1907) ILR 34 Cal. 305]

According to Kerr on Receivers (13th Edn.) at page 310 : The power of the company and its directors to deal with the property comprised in the

appointment (both property subject to a floating charge and property subject to a fixed charge), except subject to the charge are paralysed. It

means the authority competent to appoint a Receiver may give directions regarding the property. It does not imply that the right of the company to

exercise the right to vote on the basis of the shares of another company held by it at the meeting of such other company becomes automatically

suspended.

b) Ambari Tea Company Ltd. & ors. s. Manjushree Saha & ors. [(1988) 1 CLT 61]

On appointment of administrators

It was held that -

unless there are extraordinary or special circumstances, the Court should not take up the full time management of a running company which will

entail supervision of numerous and day to day details of work. (Para 39) The object of the Companies Act cannot be to create a deadlock in the

management and to prevent a company from continuing its business and the provisions of the Companies Act must be construed so that the same

can enable a company to function and not cease functioning. (para 37)

c) Pandurang Shamrao Laud Vs. Dwarkadas Kalliandas,

On appointment of administrator pendente lite It was held that -

the appointment is purely discretionary as the word "may" in the section clearly indicates but that discretion has to be exercised judicially and not

arbitrarily. In the opinion of the Court, the Court has to be satisfied as to the necessity of such an administration and as to the fitness of the

proposed administration and it must also be satisfied that it is just and proper under the circumstances of the case to appoint an administrator

before subjecting the estate to the cost of such administration. The Court has, apart from the Succession Act, general jurisdiction to appoint a

receiver in any case in which it may appear just and convenient to do so. Such an appointment cannot be claimed as of right merely because the

proceedings are contested, but whenever there is a bonafide dispute and a case of necessity has been made out, the Court in its discretion

generally makes grant.

The general principle is that the Court does not as a rule appoint a receiver as against executors whenever they have obtained probates unless

there is gross misconduct or mismanagement and waste on their part. If they are rightly in possession and there is no dispute as to their title they

will not be replaced by the grounds. Their appointment itself shows that the testator had confidence in them, and the Court gives effect to the

expression of the confidence reposed in parties by one who knew them best. The Court refuses to appoint an administrator pendente lite where

there is a person named in the will as executor whose appointment is not questioned and who can discharge the function of an administrator.

It is in the interests of all the parties to appoint an impartial person as an administrator pendente lite, and the Court receiver is an Officer of the

Court who is independent of and is bound to be indifferent between the contesting parties. Moreover u/s 247 all powers that he exercises are

subject to the immediate control of the Court and he acts under its direction.

d) Adapala Subba Reddy and Another Vs. Adapala Andemma and Others,

On suitability as regards appointment of Receiver and administrator in Probate proceedings-

It was held that -

under Section 247, Succession Act, 1925 pending any suit touching the validity of the will of a deceased person the Court may appoint an

administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator other than the right of

distributing such estate. The position of such an administrator would be analogous to that of a receiver appointed under Order 40 Rule 1, CPC.

In view of the hostile claim being set up by the appellants there is every probability of attempts to secrete the income and otherwise to defeat the

claims of the petitioner in the probate proceedings. It is therefore just and proper to appoint a receiver or administrator during the pendency of

probate proceedings to safeguard the estate particularly when the estate is of considerable magnitude.

The language of Order 40 Rule 1 is wide and elastic enough to justify an order made for this purpose. A conclusion has to be reached on the basis

of the facts of a particular case whether the appointment of a receiver is just and convenient.

e) *Wooley, Executrix of Wooley, Deceased vs. Clark & Anr.* (106 E.R. 1363) to emphasize that -

The property of a deceased person vests in his executor from the time of his death, in an administrator from the time of the grant of the letters of

administration.

There is a manifest distinction between the case of an administrator and an executor. An administrator derives his title wholly from the Ecclesiastical

Court. He has none until the letters of administration are granted and the property of the deceased vests in him only from the time of the grant. An

executor, on the other hand, derives his title from the will itself and the property vests in him from the moment of the testator's death.

f) *Bibhu Bhusan Dutta and Others Vs. Anadi Nath Dutt and Others*,

On vesting - Mere transference of management of control is not enough to satisfy requirement of vesting- Limitation Act, 1908, Section 10 It was

held that merely placing the property in the possession or control of a person does not amount to the vesting of the property in him, it cannot be

that the word "vesting" is to imply ownership because a trustee cannot be the owner of the Trust property.

While transfer of proprietary rights is not intended, mere transference of management or control is not enough to satisfy the requirements of

"vesting" as contemplated by Section 10, a right to call for a transfer and to possess the property for the purposes of the trust and also a power to

dispose of it according to terms of the trust without reference to the owner are the essentials that constitute the "vesting".

g) *Fazulbhoy Jaffar vs. Credit Bank of India Ltd.* (AIR 1914 Bom 128) As regards :

Rights and liabilities of registered share-holders stated- Companies Act, 1882, Section 151

It was held that -

it has been settled law in England for many years that a registered holder of shares in a statutory company is a person with vested interest in

property which may be burdened with an obligation to pay calls in the future. The registered members cannot keep the interest and prevent the

company from having it and dealing with it as their own without being bound to bear the burden attached to it. [*London & N.W. Ry. Company vs.*

M. Michael (3)]

h) Mathalone Vs. Bombay Life Assurance Co. Ltd.,

On the point as to who can acquire new shares of a company.

It was held -

a receiver appointed in the suit cannot acquire the newly issued shares in his name. That privilege is conferred by Section 105C only on a person

whose name is on the register of members where the receiver's name is not in the register the company is not bound to entertain an application

made by the receiver in his own name. Pingle Venkat Rama Reddy Vs. Padampat Singhania,

i) Surendra Chandra Jena and Others Vs. Laxminarayan Jena and Others,

As regards position of an Executor and an Administrator.

It was held that -

according to Section 211 of the Act the executor or administrator, as the case may be, of a deceased person is his legal representative for all

purposes and all the property of the deceased person vests in him as such. According to the scheme of the above provision of the Act, the

executor is not required to wait for the grant of the probate but can ipso facto being the legal representative prosecute the lis in view of the

devolution of the interest under Order 22 Rule 10 of the CPC inasmuch as the testator's title stands vested in the executor on his death. The case

of an administrator may however, be different, because he has to wait until grant of the letters of administration in his favour by the Court.

Ramcharan Singh Vs. Mst. Dharohar Kuer,

34. On the other hand, it is the case of the respondent that in order to ascertain what rights and powers should the Administrator appointed u/s

247 exercise to preserve and protect the estate, major part of which consist of shares in limited companies incorporated under the Companies Act,

1956. According to them, does preserve and protect principle in such a case is satisfied merely by keeping the safe custody of the shares in their

physical form and by receiving dividends and not exercising the other rights which flow from section like inter alia, voting rights or accepting bonus

shares etc. ? The other propriety rights flowing from the shares and particularly where the estate is holding a controlling block. Right to vote is the

more important right and other rights which flow from the shares will have to be vested in the administrator. According to the respondents since the

APL is appointed over the estate, he must exercise the voting rights attached to the shares to ensure that the value of the shares i.e. the estate, is

not depleted. Similarly, the Administrator must necessarily take advantage of the rights/bonus issues to augment the value of the estate.

35. It is contended that the administrator has several rights and powers under the different provisions of the ISA, including the right to distribute the

estate. These rights under the ISA which the APL may be required to exercise will depend on the nature of the assets comprised in the estate. For

example where the estate consists of shares the APL will exercise the right to vote at the meeting of the company and to receive dividend accruing

in relation to the shares etc. Therefore, in order to effectively exercise these rights, the APL's name will have to be registered in the register of

members of the concerned company in his capacity as APL.

36. It is submitted that the APL has all the rights and powers of a general administrator and the prefix general before the word "administrator" in

Section 247 of the ISA cannot, therefore, operate to limit the rights and powers of an APL vis-à-vis an administrator is provided in Section 247

itself namely the APL cannot distribute the estate. Thus Section 247 incorporates all the rights and powers conferred on the administrator under the

aforesaid chapter save and except the distribution of the estate. It is, therefore, obvious that the general administrator referred to in Section 247

must be the administrator who is appointed pending the suit as distinguished from the administrator finally appointed by the Court to administer the

estate.

37. In support of the contention they have relied upon the decision of this Court in Kali Kumar Chatterji vs. Rash Vehari Banerji, ILR (1947) 2

Cal 195 and the relevant paragraphs from the said judgment are as follows :

Section 247 empowers the Court to appoint an administrator pendente lite and confers on such administrator all the rights and powers of a general

administrator other than the right of distributing the estate. In the exercise of these powers, the administrator is subject to the control of the Court.

What are the rights and powers of a general administrator? Section 316 of the Succession Act directs an executor to provide funds for the

performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition if he has left property sufficient for the

purpose. This section in terms does not apply to an administrator. There is, however, provision in Section 320 for payment of funeral expenses

which are binding on executors and administrators. Does sapindakaran sraddha come within the expression "the necessary funeral ceremonies" in

section 316 or do the expenses of such sraddha come within the expression "funeral expenses" in section 320?

By stretching the provisions of sections 316 and 320, it may be held, in the case of a Hindu, that the adya sraddha ceremony is a part of the funeral

ceremonies and that the expenses in connection therewith are parts of the funeral expenses. But it cannot possibly be contended that the

sapindikaran sraddha which is to be performed on the first anniversary of the day of death is part of the funeral. In my opinion, sections 316 or

section 320 cannot be relied upon to sanction the prayer for Rs. 1,00,000 for meeting the expenses for sapindikaran sraddha.

If the section is to be read and understood in this sense then it follows that the expenses of sapindikaran sraddha of the testator which is not

compulsory "and is not generally performed and, therefore, not such a religious object as may be regarded as reasonable and proper cannot

possibly be sanctioned under this section. The administrator pendente lite is not in the same position as a Hindu widow and is under no obligation

to perform any sraddha or to incur any expenses thereon. To provide funds to the heir for any sraddha except as part of the funeral ceremonies

under sections 316 and 320 is nothing but distribution of part of the estate to the heir to enable him to discharge his obligation to perform the

sraddha of his deceased ancestor. I am, therefore, clearly of opinion that I have no power or jurisdiction to direct the administrator pendente lite to

pay any sum to the applicant for performing the sapindikaran sraddha of the deceased Raja Bahadur"

(emphasis supplied)

38. It is contended that APL is also the legal representative of the deceased for all purposes and the entire estate of the deceased vests in the APL

as such. But the vesting is limited in duration i.e. till the suit comes to an end and an administrator is finally appointed by a decree. On the passing of

such decree the rights and powers of an APL come to an end and the administrator takes over charge and administers the estate and completes

the administration upto the distribution of the estate.

39. Learned counsel for the respondents have placed reliance on the following cases :

a) Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others,

On the point : Share is a property, enjoyment of rights and privileges, it was held that -the curtailment of the incidental privileges, namely the right to

elect directors, to pass resolutions and to apply for winding up may well be supported as a reasonable restraint on the exercise and enjoyment of

the share-holder's right of property imposed in the interests of the general public under Article 19(5), namely, to secure the supply of an essential

commodity and to prevent unemployment. The petitioner as a shareholder has an interest in the company. His interest is represented by the shares

he holds. He is entitled to enjoy the income arising from them in the form of sale, dividend, mortgage, transfer or pledge. The holding of shares in

his name gives him voting rights thereby indirectly participating in the management of the company's affairs (para 52).

b) Maheshwari Khetan Sugar Mills (P.) Ltd. and Others Vs. Ishwari Khetan Sugar Mills and Others,

In support of the contention that APL by transmission by operation of law - Companies Act, 1956 Section 108 (1) represent the interest of the

deceased in the share holding.

It is held that-

Persons receiving shares by operation of law include Executor or Administrator of a deceased member, any person becoming entitled to a share in

consequence of the death, bankruptcy or insolvency of any member or in consequence of marriage of any female member.

Transmission by operation of law covers those cases where a person or authority acquires an interest in the property, by operation of law without

any voluntary act on his part. (para 19)

c) Balkrishan Gupta and Others Vs. Swadeshi Polytex Ltd. and Another, Reliance is also placed by appellants, however the respondents emphasis

is on rights of a Shareholder- Rights denoted by the term-

It was held that

in the Companies Act the expressions "a member", "a shareholder" or "holder of a share" are used as synonyms to indicate the person who is

recognized by a company as its owner for its purposes.

The right of ownership comprises benefits which may be curtailed by the disadvantages in the form of burdens attached to it.

The owner possesses that right which ultimately enables him to enjoy all rights in the thing owned by attracting towards himself those rights in the

thing owned which for the time being belong to others by getting rid of the corresponding burdens (para 17)

d) Jermyn Street Turkish Baths Ltd. [(1971) 3 All ER 184];

To substantiate the contention that APL has a right to intervene in case. The affairs of a company could only be said to have been conducted in a

manner oppressive to some part of the members of the company where shareholders, having a dominant power in the company, either exercised

that power to procure that something was or was not done in the conduct of the company's affairs or procured by an express or implied threat of

an exercise of that power that something was not done in the conduct of the company's affairs; to amount to oppression such conduct must be

unfair or burdensome, harsh and wrongful, to the other members of the company or some of them and lack that degree of probity which they were

entitled to expect in the conduct of the Company's affairs.

e) Kali Kumar Chatterji vs. Rash Vehari Banerji [ILR (1947) 2 Cal 1950]; On rights and powers of an APL.

The administrator pendente lite is subject to the directions of the Court in the matter of exercising the rights and powers conferred on him. The

administrator pendente lite must confine his activities within the limits prescribed by the section and while acting within those limits, he is subject to

the control of the Court. There are two limitations imposed upon the administrator pendente lite viz.

i) that he has no right or power to distribute the estate and

ii) Even while acting within the ambit of his power as limited by the section, he is subject to the control of the Court and must act according to

Court's directions.

The privileges of a member of the Company can be exercised by only that person whose name is entered in the Register of Members. A Receiver

whose name is not entered in the Register of Members cannot exercise any of those rights unless in a proceeding to which the Company concerned

is a party and an order is made therein. (para 20)

f) Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors, ; On appointment by Probate Court APL's right over shareholding of deceased

is by operation of law.

Transfer of shares in companies- when shares vesting in government by operation of law, rectification for the transfer is not required- Companies

Act, 1956, section 108 Held :

In view of Section 108 of the Companies Act as there was transmission of shares by the operation of law, rectification was not necessary. (Para

74)

g) Williams Harold Gibbs vs. Deva Prosad Roy (85 CLJ 280);

An Administrator pendente lite has the estate of the deceased vested in him.

h) Pandurang Shamrao Laud Vs. Dwarkadas Kalliandas,

APL and Receiver under Succession Act, 1925, Section 247

It was held that

the position of an administrator pendente lite is similar to that of a receiver, with this distinction that the administrator pendente lite represents the

estate of the deceased for all purposes except distribution

i) Bajranglal Khemka & ors. vs. Smt. Sheela Devi & ors. [(1970) 74 CWN 444];

It was held that

under Section 247 of the Indian Succession Act, 1925, the administrator pendente lite has all the powers of a general administrator and u/s 211 of

the said Act all the properties of the deceased vest in him.

The difference between the position of a Receiver or a sequestrator on the one hand and that of a general administrator of a deceased on the other,

is that while the estate of the deceased vests in the general administrator, no property vests in a receiver or a sequestrator.

j) In Buchan's case [(1879) 4 App Cases 583] it was held that - transfer of shares of the testator into the name of his executor, the transfer has to

be authorized by a distinct and intelligent request on the part of the executor that the shares should be dealt with in this way, and that reasonable

opportunity was afforded to the executor to transfer the shares to a purchaser in the ordinary course of administration of the estate, if he did not

wish to have them placed in his own name. Therefore, according to the respondent the shares can be registered in the names of APL as

representation of the deceased share holder on such request being made.

k) Betty Suresh Mahindra vs. Marthanda Singh Mahindra (ILR (1991) Kar 735);

Administrator pendente lite-powers of general administration except right to distribute and subject to immediate control of High Court-Not

analogous to appointment of Receiver-Even if Receiver appointed in original suit between parties, probate Court can appoint Administrator

pendente lite, if just and proper- Indian Succession Act, 1925, S.247.

Held :

Administrator pendente lite could be appointed provided that there is a lis and the question of validity of the will is pending in the Court in the

probate proceedings and the preservation of property until the dispute as to the validity of the existence of will itself is decided.

S.247 of the Indian Succession Act authorises the Court during the pendency of the probate proceedings, to appoint an Administrator pendente

lite and provides that such Administrator shall have all rights and powers of general administration except the right to distribute the estate and that

every Administrator shall be subject to the immediate control of the High Court and under the direction of the High Court, the appointment of the

Administrator is purely discretionary.

l) M/s. World Wide Agencies Pvt. Ltd. and another Vs. Mrs. Margarat T. Desor and others,

Oppression and mismanagement-petition for removal-Locus standi-legal representative of deceased member can move such petition-Companies

Act, 1956, SS 397 and 398

Held :

The legal representatives of deceased member whose name is still on the register of members are entitled to petition under sections 397, 398.

To substantiate the contention that APL can represent the estate of the deceased till the decision in a probate proceeding as Personal

representative of deceased Member on whom title to his shares devolved by operation of law- Is "member" for purposes of Section 397-

Companies Act, 1956, Section 397.

Transmission"" means an immediate or instantaneous sending across In this sense, when one is dealing with transmission of shares, it must mean

that upon the death of the last holder of shares, in law, there is an instantaneous transfer of ownership to the heirs of the last holder, and the

property therein must vest in the heirs from the moment of death onwards. This would happen by virtue of operation of the law of succession. This

position, that ownership of property rights vis-À-Â½-vis the shares held by the deceased is transferred to the heirs of a deceased holder, is

recognized by necessary intendment by the proviso to Section 108 of the Companies Act, 1956.

On its true construction, Section 210 of the Companies Act, 1948 (U.K) (corresponding to Section 397 of the Companies Act, 1956) requires

that the word ""member"" should include the personal representatives of the deceased member on whom title to his shares devolved by operation of

law.

m) (1970) 1 WLR 1194, Jermyn Street Turkish Baths Ltd.;

No particular form is required by statute or under the articles of this company for registration of personal representatives in the register of members

of the company. The nature of the entry in the company's register must depend on the contention of the parties. All that is required is ""a distinct

and intelligent request"" on the part of the executors. What the administrators were requesting was not merely to have a note of the letters of

administration entered on the register, but to be registered themselves as members of the company.

n) Life Insurance Corporation of India Vs. Escorts Ltd. and Others,

On transfer of rights of a shareholder-

Transfer of shares-Transferee becomes owner of beneficial interest-Legal title continues with transferor until transfer is registered in books of

company- Companies Act, 1956, Section 111.

It was held that -

a share is transferable but while a transfer may be effective between transferor and transferee from the date of transfer, the transfer is truly

complete and the transferee becomes a shareholder in the true and full sense of the term, with all the rights of a share holder, only when the transfer

is registered in the company's register. A transfer effective between the transferor and transferee is not effective as against the company and

persons without notice of the transfer until the transfer is registered in the company's register. Indeed until the transfer is registered in the books of

the company the person whose name is found in the register alone is entitled to receive the dividends, notwithstanding that he has already parted

with his interest in the shares. However, on the transfer of shares, the transferee becomes the owner of the beneficial interest though the legal title

continues with the transferor. The relationship of trustee and "cestui que trust" is established and the transferor is bound to comply with all the

reasonable directions that the transferee may give. He also becomes a trustee of the dividends as also of the right to vote. The right of the

transferee to get on the register must be exercised with due diligence and the principle of equity which makes the transferor a constructive trustee

does not extend to a case where a transferee takes no active interest to get on register.

40. It is the contention of the respondent that the appellants have relied on the judgment of a Division Bench of this Hon^{ble} Court in Mahamaya

Dassi Vs. Commissioner of Income Tax, for the purpose of submitting that the estate of the deceased does not vest in an APL. According to them,

in Mahamaya Dassi (supra) the Division Bench of this Court in the context of Section 168 of the Income Tax Act, 1961, observed :

Therefore, when a suit was pending touching the validity of the will there was nobody to give a legal discharge and in that context it was observed

that the administrator pendente lite had the estate vested in him and it did not mean that the property became vested in the administrator pendente

lite beneficially and for all purposes and the income of the beneficiary became the income of the administrator pendente lite.

Reliance was also placed on certain observations of the Division Bench of this Court in the case of Bajranglal Khemka vs. Smt. Sheila Devi [1970]

74 CWN 444, where the court observed that the administrator pendente lite had all the powers of a general administrator that the estate of the

deceased vested in him. The attention of the court was not drawn to the fact that the administrator pendente lite did not have the power to

distribute the assets that the general administrator had as we have noted from the section itself. But the said observations, in our opinion, do not in

any way affect the position as to whether the administrator spoken of in the Explanation to Section 168 is an administrator pendente lite or not. But

the rights vested in an administrator pendente lite are limited as have been mentioned in Section 247 of the Succession Act and it is analogous to

the rights of a receiver under Order 40 of the Code of Civil Procedure.

41. It is submitted that the ratio of Mayamay Dassi (supra) is that APL is not an administrator as contemplated in the Explanation to Section 168 of

the Income Tax Act, 1961.

42. It is submitted that in subsequent cases like Champa Properties (P.) Ltd. Vs. Commissioner of Income Tax, the ratio of Mahamaya Dassi

(supra) has been stated by the Division Bench of this Hon'ble Court for the following proposition :

Assessment was one of the processes open in law to adjudicate the title of the parties or the shares of the parties. Assessment could not be held up

by mere existence of a dispute as to title, till the final determination of proceedings, if any. It was open to the Income Tax Officer to decide who

was the owner and to whom a particular income belonged. To that extent, the power of the Income Tax Officer was plenary..... The Income

tax Officer, however, has to decide the question in accordance with the other provisions of law. It is also open to the Income Tax authorities to

make protective assessment.

43. The respondents have also referred to a decision of Commissioner of Income Tax Vs. Smt. P. Dhanalakshmi and others, the Division Bench of

the Madras High Court has held as follows :

While considering a question of a similar nature in Mahamaya Dassi Vs. Commissioner of Income Tax, The Calcutta High Court held that section

247 only contemplates the preservation of the property until the question as to the existence or the validity of the will is determined. An

administrator pendente lite gets any right or authority not on the death of the testator but from the date of appointment and by virtue of appointment

by the appropriate court. In view of the nature and duties required to be performed by the administrator pendente lite appointed u/s 247 of the

Indian Succession Act and in view of the circumstances under which administrator pendente lite can be made, an administrator pendente lite is not

an administrator as contemplated by section 168 of the Income Tax Act and Section 168 will not apply to him.

44. It is, therefore, contended that observations made in Mahamaya Dassi (supra) in the context of Explanation to Section 168 of the Income Tax

Act may be a precedent for the purpose of Section 168 of the Income Tax Act but cannot be considered as a precedent under the Succession Act

which is the general Act relating to Probate and Letters of Administration, including Section 247 of the ISA. The two Acts are not cognate Acts

and do not relate to each other - they cover entirely different fields and a collateral decision u/s 168 of the Income Tax will not be a binding

precedent under the ISA which directly deals with the rights and powers of APL in Section 247.

45. We have heard the Learned Counsel for parties at length and considered the authorities cited before us. The jurisdiction to appoint and grant

administration to APL vests in the Court of Probate and no other Court, where the necessity for the grant is made out. The position of an APL is

similar to that of a Receiver, with this distinction that the APL represents the estate for all purposes (except distribution) whereas the Receiver does

not represent the estate nor the parties but simply holds the estate for the benefit of the successful litigant.

46. In our opinion, the rights and powers of the General Administrators over the estate of the deceased depends on the nature of the property both

movable and immovable and the respective statute which governs acquisition and enjoyment of such property. In so far as stocks and shares of the

companies are governed by the Companies Act. In the light of the rules and regulations under the Companies Act, there are two modes by which

shares of a company can be obtained i.e. by transfer and/or transmission as provided u/s 108 of the Companies Act to be entered into the register

of members. In the fact situation of the case the stocks and shares which forms major part of the estate left by the deceased are the subject matter

of administration of the estate, and the only manner these can be administered is by exercising propriety rights in the shares except distribution to

the beneficiaries till the final adjudication in the matter.

47. The appellants/petitioners have specifically sought in their applications for being appointed as APL to enable him to collect dividends paid

against the shares and all other incomes of the estate which is one of the trait and characteristic of the different kinds of rights emanating from

ownership of shares, stocks of a company, as provided under the Companies Act, 1956. Proprietary rights of ownership of stocks and shares like

a) the right to vote at all meetings (Section 87);

a) the right to requisition an extra ordinary general meeting of the company or to be a joint requisitionist (Section 169);

b) the right to receive notice of a general meeting (172);

c) the right to appoint proxy and inspect proxy registers (176);

d) in the case of a body corporate which is a member, the right to appoint a representative to attend a general meeting on its behalf (187);

e) the right to require the company to circulate his resolutions (188)

48. Considering the fact that the Joint Administrators appointed by this Court will be required to administer property of the deceased including the

share holding and stocks held by the deceased in various companies with the assured object of its protection and preservation, it cannot be said

that the Joint Administrators would be mere spectators, if they are expected and/or permitted to collect dividend accruing out of these stocks and

shares there is no reason why they should not be eligible and entitled to other privileges incidental to the ownership of such shares and stocks

according to the exigencies found to exist as representative of the beneficiaries till the matter is finally decided by the Court and in their capacity as

APL. Nothing prevents them to exercise all the rights, powers and privileges incidental to the ownership of the shares and stocks except that of

distributing such estate to the legatees/beneficiaries which is required to be finally determined by the Court.

49. Therefore, even though they are appointed by the Court as APL nothing prevents them in their capacity as representatives of the beneficiaries

to exercise all such rights which flow from the ownership of the shares and so enjoyed by the deceased during her life time. Therefore, we have no

hesitation to hold that in their capacity as representative of the deceased the estate of the deceased vests in them for that limited purpose of

administering the same for the benefit of estate of which succession is in abeyance. It is true that in order to enjoy certain rights flowing from the

shares and stocks of the companies held by the deceased they will have to apply to the respective companies to obtain such benefit viz. in case the

company comes out with rights issue and/or bonus shares which otherwise can only be subscribed by the share holder. Therefore, as

representative of the share holder they can always apply to the company to subscribe for such shares in their capacity ""as representative of the

deceased in the estate"" and not as owners in their own names. In order to enjoy privileges incidental to the ownership of the shares an application

will have to be made to the company as required by law to record their names in the Register of members and the companies will have to consider

such an application in accordance with their Articles of Association and the provision of law which governs the same.

50. We do not want to discuss the various facets of such exercise of rights of ownership of shares by the Joint Administrators as we think it better

to leave it to their best discretion and wisdom and, according to the exigency found to exist. In such an event it would be always open to the

parties if they are aggrieved to approach the Probate Court (which has appointed a committee of three persons) as Joint Administrators (who) are

subject to the immediate control of the Court and shall act under its direction.

51. We have to accept existence of such rights and powers in APL and the Court which appoints APL has every right to give directions to the

Joint Administrators regarding the property as a mode of equitable relief.

52. In the present case, it is not disputed that the deceased has controlling block of shares in M.P. Birla Group of companies and if the rights

flowing from such shares are kept in abeyance during the pendency of the suit it may be detrimental to the interest of the companies as a whole as

the companies may be managed by minority shareholders and/or suffer at the hands of vested interest.

53. We fail to understand the hesitation on the part of the appellants in permitting the Joint Administrators to approach the various companies of

which the deceased owns and possess shares and stocks to get themselves recorded as representatives of the estate of the deceased appointed by

the Court and to take all necessary steps to enjoy rights and privileges incidental to the ownership of the shares and stocks which consists of

controlling power in M.P. Birla Group of Companies and safeguard the interest of the ultimate beneficiaries. This we say is necessary for the

administration of the estate by way of an equitable relief and in the larger interest of the ultimate beneficiaries. Further this is not going to cause any

prejudice to the parties to the suit as they will have every right to approach the Court to seek appropriate direction or order in case the Joint

Administrators deviate from the trust and faith reposed in them to enable them to exercise all the rights and powers of a General Administrator qua

the estate of the deceased including rights of share holding and stock subject to the exception of distributing such estate to any person for which

they are accountable to the Court.

54. To conclude, we find that the parties for the purpose of administration of the estate having agreed to appointment of 3 Member Committee as

Joint Administrators they shall be entitled to exercise of the rights and powers of General Administrators over the estate of the deceased other than

the right of distributing such estate and we, therefore, direct them i) to prepare and file an inventory of the assets of the estate and appraisal of the

value of such assets and ii) to take over possession of the assets of the estate in the manner provided under the law considering the nature of the

property.

a) From Receivers and Special Officers appointed by the Probate Court;

b) From Executor's legal heirs;

c) From the present Institution and companies as the case may be

55. The Receivers and Special Officers, appointed by the learned Single Judge (Probate Court) will hand over the assets to the Joint

Administrators.

56. Receivers/Special Officers appointed by the Probate Court will on handing over the assets out of the estate of the deceased for which they

were appointed will stand discharged on their submission and settlement of accounts by the Court.

57. The appeals and applications stand disposed of, however there shall be no order as to costs.

J.N. Patel, C.J.

I agree